

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT LEAVENS,)	Civil Action No. 1:10-ca-11602-RWZ
)	
Plaintiff,)	
)	
v.)	COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF)	MASSACHUSETTS'S MOTION TO
ENVIRONMENTAL PROTECTION and)	DISMISS
UNITED STATES COAST GUARD,)	
)	
Defendants.)	
)	

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, the Commonwealth of Massachusetts hereby moves to dismiss the complaint against it on the basis of the Eleventh Amendment's prohibition of Federal court claims against a state or its agencies by a private party. This Motion takes no position on the limited portion of the Plaintiff's declaratory claims that are solely against the United State Coast Guard. The Commonwealth's Memorandum of Law in support of this Motion is submitted herewith.

The Commonwealth notes that a joint Motion to Consolidate this case with another virtually identical case, Civil Action No. 1:10-cv-11061-GAO, is now pending. The Commonwealth requests that this Motion, like the Coast Guard's Motion to Dismiss, be treated

as filed in both of these cases whether or not they are consolidated.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS
By its attorney,

MARTHA COAKLEY
ATTORNEY GENERAL

/s/Louis Dundin

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Date: October 8, 2010

CERTIFICATION OF CONSULTATION

Counsel to the Commonwealth in this action hereby certifies that pursuant to Local Rule 7.1(A)(2) of this Court he has conferred with counsel for the defendant, United States Coast Guard and counsel for the plaintiff Robert Leavens regarding the contents of the foregoing motion and attempted to narrow or resolve the issues.

Date: 10/8/10

/s/Louis Dundin
Louis Dundin

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and that paper copies will be sent to those indicated as non-registered participants on this 8th day of October, 2010 as follows, by first class mail.

Jered J. Lindsay Trial Attorney U.S. Department of Justice Environmental Defense Section P.O. Box 23986 Washington, DC 20026-3986	Jennifer A. Serafyn Assistant U.S. Attorney U.S. Attorney's Office One Courthouse Way, Suite 9200 Boston, MA 02210	Jeffrey L. Roelofs Law Offices Of Jeffrey L. Roelofs, P.C. 30 Green Street Newburyport, MA 01950
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/s/Louis Dundin
Louis Dundin